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SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102			HAND, MELANIE JO	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/699,193  
Filing Date: October 31, 2003  
Appellant(s): NHAN ET AL.

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Richard L. Bridge  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed August 22, 2008 appealing from the Office action mailed March 28, 2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,496,429

HASSE et al

03-1996

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse et al (U.S. Patent No. 5,496,429).

With respect to **Claim 1**: Hasse teaches an absorbent article 20 comprising: a stretchable substrate 26 and an absorbent composite 28 comprising a layer of adhesive composition in contact with the stretchable substrate 26 and a layer of particulate superabsorbent material applied to and held by the adhesive composition, the absorbent composite 28 being secured to the substrate 26 by the adhesive composition. (Col. 20, lines 20-25) It is examiner's position that the substrate, backsheet 26, is stretchable because Hasse discloses that the backsheet is

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flexible, wherein “flexible” refers to a material which is compliant and will readily conform to the general shape and contours of the human body. In order to be complaint and conform to the contours of the human body, the material must necessarily stretch, thus the material of backsheet substrate 26 is stretchable. (Col. 20, lines 51-53) It is also noted in support of examiner's position that Hasse discloses thermoplastic polyethylene as a material for substrate 26, which is a material that is by its nature elastomeric plastic, i.e. stretchable.

With respect to **Claim 2**: Stretchable substrate 26 disclosed by Hasse is a first stretchable substrate. Article 20 taught by Hasse further comprises a second stretchable substrate 24 in generally superposed relationship with the first stretchable substrate 26 whereby the absorbent composite 28 is disposed between said first and second stretchable substrates 26,24, respectively. (Col. 20, lines 63-65, Col. 21, lines 9-14)

With respect to **Claim 3**: The layer of adhesive composition taught by Hasse is a first layer of adhesive composition, the absorbent article 20 further comprising a second layer of adhesive composition applied to the layer of particulate superabsorbent material defining composite 28. (Col. 21, lines 9-14)

With respect to **Claim 4**: The stretchable substrate 26 disclosed by Hasse is a first stretchable substrate, the absorbent article 20 further comprising a second stretchable substrate 24 in generally superposed relationship with the first stretchable substrate 26 and secured to the second layer of adhesive composition to thereby secure the absorbent composite 28 to said second stretchable substrate 24. (Col. 21, lines 9-14)

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With respect to **Claim 17**: Absorbent composite 28 further comprises hydrophilic fibers. (Col. 19, lines 17-32)

With respect to **Claim 18**: Absorbent composite 28 has a width and a length (Fig. 2), said absorbent composite 28 having a non-uniform basis weight across at least a portion of at least one of the width and the length of said absorbent composite 28. (Col. 19, lines 29-32)

With respect to **Claim 19**: Stretchable substrate 26 is elastic. (Col. 20, lines 48-53)

With respect to **Claim 20**: Stretchable substrate 26 defines an outer cover of the absorbent article 20, the absorbent article 20 further comprising a liquid permeable liner 24 in generally superposed relationship with the outer cover and adapted for contiguous relationship with the wearer's skin, the absorbent composite 28 being disposed between the liner 24 and the outer cover. (Col. 20, lines 63-65, Col. 21, lines 9-14)

With respect to **Claim 21**: The layer of adhesive composition taught by Hasse is a first layer of adhesive composition and the layer of particulate superabsorbent material is a first layer of particulate superabsorbent material, the absorbent article 20 further comprising a second layer of adhesive composition applied to the first layer of particulate superabsorbent material (on its topsheet-facing side), a second layer of particulate superabsorbent material included as part of the absorbent composite 28 being applied to and held by the second layer of adhesive composition. (Col. 20, lines 20-25, Col. 21, lines 9-14) Specifically, topsheet 24 is separately manufactured and inserted as part of the absorbent assembly 22 by attaching topsheet 24 to the composite structure of backsheet 26 and core 28 via a second adhesive layer. If one were to

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keep the nomenclature consistent between claims 1 and 21 and with respect to the elements of Hasse that anticipate the claims, the first layer of adhesive would still be attaching particles from the core 28 to the backsheet 26, as the backsheet 26 has already been formed as part of the assembly 22 prior to addition of the topsheet by adhesion to core 28. Topsheet 24 is attached to some (not all) particles of the superabsorbent core 28, as applicant is no doubt aware that no adhesive holds all superabsorbent particles in place immediately and there will be loose particles that did not adhere to the first layer of adhesive. Therefore, this second layer of adhesive will hold a number of loose particles of core 28 that will define a second layer of superabsorbent because they are attached to a layer or adhesive. (Col. 20, lines 23-25)

**(10) Response to Argument**

Applicant's arguments filed August 22, 2008 have been fully considered but they are not persuasive. As to applicant's argument regarding claim 1 that Hasse does not disclose a stretchable substrate because backsheet 26, cited against the claimed stretchable substrate, is not stretchable. Applicant is referred to Col. 20, lines 51-53, where Hasse discloses that the backsheet is flexible, wherein "'flexible' refers to materials which are compliant and will readily conform to the general shape and contours of the human body." A compliant material that can conform to the general shape of the user necessarily stretches to accomplish this conformation; that is the nature of a compliant material. Hasse also discloses that the backsheet is comprised of thermoplastic polyethylene or polypropylene. ('429, Col. 20, lines 56-62) The word "thermoplastic" is an explicit disclosure by Hasse and an important distinction that applicant appears to be disregarding in the remarks presented. To further clarify examiner's position, simple polyethylene or polypropylene material is not always elastomeric and not always

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stretchable. However, thermoplastic polyethylene or polypropylene is by its nature an elastomer, and is stretchable. ('429, Col. 20, lines 56-62)

As to applicant's argument that Hasse fails to teach or suggest a layer of particulate superabsorbent material applied to and held by an adhesive composition, Hasse discloses in Col. 20, lines 20-26 that the backsheet is joined to the absorbent core by a layer of adhesive, and discloses in Col. 19, lines 28-32 that the absorbent core has a superabsorbent gradient, achievable only by using superabsorbent polymers, which are necessarily resinous and particulate. Hasse continues on to disclose in Col. 21 that the topsheet 24 is separately manufactured and later joined to the chassis 14. Since the absorbent particulate must be supported in place on a substrate to form the diaper as intended, it is implicit in the disclosure of the Hasse reference that the superabsorbent particulate layer and substrate are already disposed on the chassis 14 when the topsheet is disposed thereon. The absorbent particulate cannot be placed on the chassis alone without something to hold it in place prior to the topsheet being applied. Thus, it is examiner's position that the absorbent core comprising the layer of superabsorbent polymer particulate is applied to and held by the adhesive on the substrate 26.

Applicant's arguments with regard to dependent claims 19 and 21 have been fully considered but are not persuasive, as applicant's arguments depend entirely on arguments regarding the rejection of claim 1, which have been addressed *supra*.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.



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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

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***Primary Examiner, Art Unit 3761***